

QUESTA PETROLEUM CO.

IBLA 77-423, 449

Decided December 16, 1977

Appeals from decisions of the Utah State Office, Bureau of Land Management, requiring acceptance of a no-surface-occupancy stipulation prior to issuing noncompetitive oil and gas leases U-29583 and U-29577.

Affirmed as modified.

1. Oil and Gas Leases: Discretion to Lease -- Secretary of the Interior -- Wild and Scenic Rivers Act

The decision to issue an oil and gas lease to the first qualified offeror is within the discretion of the Secretary of the Interior, and offers within proposed wild and scenic river areas may be rejected to protect such areas.

2. National Environmental Policy Act of 1969: Generally -- Oil and Gas Leases: Stipulations -- Wild and Scenic Rivers Act

The Bureau of Land Management may require the execution of special stipulations, including a no-surface-occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation along a proposed wild and scenic river corridor, has considered all information available to it, has adequately weighed the factors involved, and the Appellant has not shown sufficient reason to change the result, the decision will be upheld.

APPEARANCES: Frank D. Gorham, Jr., President, Questa Petroleum Co., for Appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Questa Petroleum Company appeals from decisions dated June 3 and July 1, 1977, of the Utah State Office, Bureau of Land Management (BLM), determining that leases should not be issued pursuant to Appellant's offers U-29583 and U-29577, respectively, authorizing disturbance of certain described lands. <sup>1/</sup> However, each decision indicated a lease could be issued upon acceptance of a stipulation which precluded occupancy or other activity on the surface of such lands. If Appellant would not accept the stipulations, the leases would be issued without such lands being included.

The BLM decisions and the appeals are similar and, therefore, are consolidated for decision by this Board.

In its decisions, the BLM State Office states that an "oil and gas environmental analysis" (EAR) has been prepared for the lands administered by the BLM Moab District Office, which includes the land in Appellant's lease offers, although the decisions contain no specific references to it. (The Board requested a copy of the EAR from the State Office and has considered it in regard to these appeals.) The decisions go on to describe the recreational and scenic attributes of the Green River, which forms a boundary of the lands involved. The lands in these leases are within 6 miles of each other and adjoin the river. The State Office then made the following findings in both decisions:

Oil and gas operations could increase sediment load in the river, and serious impacts would occur if oil or other caustic fluids were released into the water. The aquatic flora and fauna could be affected by petroleum activities.

Recreation activities such as floatboating, swimming and sunbathing would be damaged by an oil spill into the river. An important consideration is that the water from the Green River eventually flows through Canyonlands National Park and into Lake Powell. An oil spill that would reach these areas would have serious impacts both ecologically and aesthetically.

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<sup>1/</sup> The lands for which the no-surface-occupancy stipulations were required for each lease offer are as follows:

U-29583 - sec. 29, T. 25 S., R. 17 E., SLM, Utah.

U-29577 - sec. 19, lots 1-13 inclusive, E 1/2 E 1/2;  
sec. 30, lots 1-5 inclusive, NW 1/4 NE 1/4,  
SE 1/4 NW 1/4, E 1/2 SW 1/4, T. 24 S., R. 17 E.,  
SLM, Utah.

An oil and gas activity that would disrupt the environment of the portion of the river that is being studied for designation under the Wild and Scenic River Act [16 U.S.C. § 1271 et seq. (1970)] would probably remove the river from further consideration.

For these reasons, the BLM State Office determined that no oil and gas leases should issue for the particular lands without the no-surface-occupancy stipulation.

Appellant disputes the findings of BLM. It asserts that the particular lands are considered to be within a prime prospecting area for commercial oil and gas production. It argues that this area, in terms of scenic and recreational attributes, is not unique compared to similar areas throughout the Rocky Mountain States. It further argues that exploration operations would be conducted with due respect to the environment and all cleanup requirements, and that since all operations would be on shore, the likelihood of any oil spill reaching the river is remote. It, therefore, requests issuance of the leases without the no-surface-occupancy stipulation.

Appellant's arguments are not persuasive in showing that the no-surface-occupancy stipulation is not necessary. For the reasons discussed below, we affirm the decisions of the BLM State Office insofar as they require the stipulations.

[1] The decision to issue an oil and gas lease to the first qualified offeror for particular land is within the discretion of the Secretary of the Interior. 30 U.S.C. § 226(a), (c) (1970); Udall v. Tallman, 380 U.S. 1, 4 (1965); Burglin v. Morton, 527 F.2d 486, 488 (9th Cir. 1975). The Board has held that oil and gas lease offers for land within an area under study for possible inclusion in the wild and scenic rivers system under 16 U.S.C. § 1271 et seq. (1970) may be rejected in exercise of the Secretary's discretion to protect the areas. E.g., Rosita Trujillo, 21 IBLA 289 (1975).

[2] BLM may require the execution of special stipulations to protect environmental and other land use values as a condition for issuing an oil and gas lease. 43 CFR 3109.2-1. In proper circumstances, the no-surface-occupancy stipulation is a valid exercise by BLM of its management authority regarding the oil and gas leasing of the public lands. E.g., Neva H. Henderson, 31 IBLA 217 (1977); Bill J. Maddox, 17 IBLA 234 (1974); Quantex Corp., 4 IBLA 31 (1971).

The EAR relied on by the BLM State Office, Price District Oil and Gas EAR (August 15, 1975, UT-060-601), substantiates the conclusions reached in its decisions. The EAR discusses generally the

environment of the area encompassing most of Carbon and Emery Counties, the eastern portion of Wayne County, and the northeastern corner of Garfield County, all in Utah. It also describes the activities associated with oil and gas exploration, development and production, and their effect on the various elements of the area covered by the EAR. The west bank of the Green River south of the town of Green River, including the lands involved in these appeals, is designated area #10. On page 115 of the EAR this area is recommended for no occupancy or other surface activity. See also pages 50, 51, 79, 80, and 132 of the EAR. Other designated areas covered by the EAR are recommended for the same stipulation, others for less restrictive stipulations, and some for no leasing.

BLM, as manager of the public lands, must consider all available information when it weighs the various uses of the land. It has done so here. When conflicting uses are at issue, obviously the final decision will cause complaint. However, in the absence of a showing that BLM did not adequately consider all the factors involved, and where the Appellant has not shown sufficient reason to change the result, the final decision will be upheld. Cf. Neva H. Henderson, supra; Bill J. Maddox, 24 IBLA 147 (1976). The Utah State Office, in its decision requiring the no-surface-occupancy stipulation, has shown that it considered all information available to it and has adequately weighed the factors involved. To reemphasize, it has been held proper to reject an oil and gas lease offer to protect a proposed wild and scenic river corridor. Rosita Trujillo, supra; John Oakason, 19 IBLA 191 (1975). Therefore, a fortiori, it is appropriate to condition issuance of a lease along such corridor upon the lessee's acceptance of a no-surface-occupancy stipulation. Cf. Bill J. Maddox, supra at 24 IBLA 151, upholding a no-surface-occupancy stipulation for another Utah river under study for wild and scenic river designation. We, therefore, affirm the BLM decisions.

We note, however, that the decision regarding lease U-29583 involved only section 29. Appellant's lease offer also included section 30 of the same township. The oil and gas plat in the case file shows that part of section 30 may also be within the Green River scenic corridor designated as area #10 by the EAR. Therefore, prior to issuing a lease, the Utah State Office should consider whether protective stipulations are necessary for all or part of section 30.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

decisions appealed from are affirmed with the above modification concerning further consideration of lease U-29583.

Joan B. Thompson  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Newton Frishberg  
Chief Administrative Judge

